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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Tsutomu Tamaki :
Application No. 09/963,466 :
Filed: September 27, 2001 :
Attorney Docket No. 030675-063 :

This is a decision on the petition under 37 CFR 1.181, filed July 28, 2005, to withdraw the holding of abandonment for the above-identified application. The petition requests that the abandonment, as set forth in the Notice of Abandonment of August 17, 2005, for failure to timely pay the required issue fee and publication fee, is applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85) be withdrawn. The request asks that the abandonment be withdrawn because the Issue fee had already been paid. This is also a decision on the petition under 37 CFR 1.313(c)(2), filed November 4, 2005, to withdraw the above-identified application from issue after payment of the issue fee.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.313(c)(2) is **DISMISSED** since the application is abandoned for failure to timely pay the issue fee on or before May 18, 2005.

BACKGROUND

- November 10, 2004: A NOTICE OF ALLOWANCE AND FEE(S) DUE (PTOL-85) is mailed indicating that an Issue fee of \$1,370 and Publication fee of \$300 are due by February 10, 2005.¹
- February 8, 2005: Applicant filed PART B- FEE(S) TRANSMITTAL (PTOL-85B) with the total required fees of \$1,706, the fees filed have been credited to the instant application.
- February 18, 2005: A CORRECTED NOTICE OF ALLOWANCE AND FEE(S) DUE (PTOL-85) is mailed indicated that no ("0") fees are due. The CORRECTED NOTICE OF ALLOWANCE AND FEE(S) DUE (PTOL-85) mailed further states the following on page 1 of 3:

¹ On December 8, 2004, the Issue fee increased to \$1,400.

THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. **THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.** (Emphasis added)

- August 17, 2005: A Notice of Abandonment is mailed with the box checked indicating that the application is abandoned for failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

A review of the evidence presented by the applicant and a review of the USPTO application file establishes that the request cannot be granted. The CORRECTED NOTICE OF ALLOWANCE AND FEE(S) DUE (PTOL-85) mailed February 18, 2005 clearly sets forth that the "THE PTOL-85B (OR AN EQUIVALENT) **MUST** BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED" (emphasis added). Since the applicant failed to return the PTOL-85B, even though no fee was due, the application was correctly regarded as abandoned for failure to respond to the CORRECTED NOTICE OF ALLOWANCE AND FEE(S) DUE (PTOL-85) mailed February 18, 2005.

Petitioner may wish to consider filing a petition under 37 CFR 1.137 to revive this application with a renewed petition under 37 CFR 1.313(c)(2).

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.



Frances Hicks
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